Supreme Court, U.S.
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No. 92-288

In The
Supreme Court of the United States
October Term, 1992

In re:

HOLIDAY TOWERS, INC.

THEODORE R. SAKER,

Petitioner,

v.

FREDERICK M. LUPER, TRUSTEE,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

LUPER, WOLINETZ, SHERIFF & NEIDENTHAL
A Legal Professional Association

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QUESTION PRESENTED FOR REVIEW

1. Was the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, within its jurisdiction when it entered an order determining the fees of a debtor's attorney?

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STATEMENT OF THE CASE

On July 9, 1990, Theodore R. Saker, A Legal Professional Association, (hereinafter Saker) filed a Notice of Final Application by Counsel for Debtor for Compensation for services rendered to the bankruptcy estate of Holiday Towers, Inc. along with a Diary of Services Rendered on Behalf of Holiday Towers, Inc. Counsel for the Trustee objected to such final application, pointing out in detail the deficiencies, errors, and incomprehensible items in the Diary of Services. On February 26, 1991, the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, entered an Order on Saker's Final Application citing lack of detail, arbitrary and capricious time entries and computation of hours, fatally flawed timekeeping records, and lack of appropriate service of Saker's Diary of Services, among other deficiencies, as grounds to disallow most of the fees requested.

On March 8, 1991, Saker filed a Notice of Appeal of the Bankruptcy Court's Order. The question presented by Saker to the United States District Court was as follows: "Does Article III of the United [States] Constitution apply to the court below to the extent of vitiating such court's

actions for lack of constitutional authority?" This appeal did not challenge any factual finding or legal conclusion of the Bankruptcy Court, but rather sought to challenge the entire United States bankruptcy system. The District Court found Saker's brief to be "patently frivolous," and "an outrageously obvious ploy aimed at frustrating the efficient administration of this case." (Pet. Appendix, p. A-23).

On September 12, 1991, Saker filed a Notice of Appeal of the decision of the United States District Court to the United States Court of Appeals for the Sixth Circuit. Saker stated the issue presented as follows: "Do the U.S. Bankruptcy Courts have a basis under the constitution to exercize [sic] the functions assigned them and have a lawful basis for claiming jurisdiction over said functions?" The United States Court of Appeals for the Sixth Circuit found Saker's argument to be meritless. The Court found that "The bankruptcy court's exercise of jurisdiction to enter a final order on Saker's application for fees is within the limits of jurisdiction established by 28 U.S.C. §157(b). Further, it is also within the constitutional limits established by Marathon." (Pet. Appendix, p. A-11).

Thereupon, Saker filed his Petition for a Writ of Certiorari on August 17, 1992.

SUMMARY OF ARGUMENT FOR DENYING THE PETITION

Respondent respectfully submits that the petition for a writ of certiorari be denied for two reasons.

First, Saker lacks standing to present the broad issue of the constitutionality of the entire bankruptcy court system. Both the United States District Court and the United States Court of Appeals for the Sixth Circuit so found, both describing Saker's appeals as frivolous.

Second, if Saker is presenting the issue of the authority of the Bankruptcy Court to enter an order determining the fees of a debtor's attorney (the only constitutional issue which Saker has standing to present), it is well settled that the Bankruptcy Court possesses jurisdiction to determine administrative matters such as fee applications of debtors' counsel.

Since it is apparent that the instant petition for a writ of certiorari is frivolous, respondent requests that this Honorable Court award him just damages and costs pursuant to Rule 42.2 of the rules of this Honorable Court.

ARGUMENT FOR DENYING THE PETITION

1. SAKER LACKS STANDING TO PRESENT BEFORE THIS COURT THE BROAD ISSUE OF THE CONSTITUTIONALITY OF THE ENTIRE BANKRUPTCY COURT SYSTEM.

The United States Court of Appeals for the Sixth Circuit appropriately noted that the question at issue is simply "whether the bankruptcy court was within its jurisdiction to enter an order determining the fees of a debtor's attorney." (Pet. Appendix, p. A-13). Saker simply has no standing to challenge the entire structure of bankruptcy courts. It is axiomatic that "A case or controversy must exist at all stages of an action." Steffel v. Thompson, 415 U.S. 452 (1974). Furthermore, "The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests." Aetna Life Insurance Company of Hartford Conn. v. Haworth, 300 U.S. 227 (1937).

In order to meet the case or controversy requirement, it is necessary that a party have standing to sue. The standing question asks "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal court jurisdiction and to

justify exercise of the court's remedial powers on his behalf." Worth v. Seldin, 422 U.S. 490, 498-99 (1975).

In the instant case, Saker clearly cannot have a personal stake in the outcome of the controversy he seeks to present before this Court. Saker invoked the Bankruptcy Court's jurisdiction when he petitioned it for fees. United States District Judge Graham correctly reasoned that "even if the bankruptcy court had no authority to curtail Saker's fees, then it would also have lacked authority to grant him any fees in the first place. Thus, Saker lacks standing to assert the Marathon 'issue' because he has no stake in its resolution." (Pet. Appendix, p. A-24).

The United States Court of Appeals for the Sixth Circuit similarly found that "The facts of this case . . . simply do not allow Saker to make a meaningful challenge of the bankruptcy court system. This case involves the simple question whether a bankruptcy court may determine the fees of a debtor's attorney. Marathon considered the much more complex question of whether a bankruptcy court may adjudicate state law claims. Saker's attempts to use the reasoning of Marathon are fruitless. . . . Given Saker's misguided, inappropriate, and unsupported arguments, we find that his appeal is frivolous". (Pet. Appendix, pp. A-15 and A-16).

Nothing in Saker's Petition for Writ of Certiorari changes the fact that Saker continues to lack standing to assert a broad challenge to the bankruptcy court system.

2. THE BANKRUPTCY COURT POSSESSES CONSTITUTIONAL AUTHORITY TO EXERCISE THE JURISDICTION CONFERRED UPON IT.

Although Respondent does not believe that the constitutional authority of the Bankruptcy Court to exercise its jurisdiction is properly before this Court, a review of events subsequent to the decision of this Honorable Court in Northern Pipeline Construction Co. v. Marathon Pipeline Co. (hereinafter Marathon), 458 U.S. 50, 102 S. Ct. 2858 (1982) dispels any issue concerning the constitutional authority of the Bankruptcy Court to rule on Saker's final fee application.

The Marathon case was a breach of contract case filed by a debtor in possession in a bankruptcy court. A plurality of the Court found the grant of jurisdiction to the Bankruptcy Court by section 241(a) of the Bankruptcy Act of 1978 to be unconstitutional for the reason that it "impermissibly removed most, if not all, of 'the essential attributes of the judicial power' from the Art. III district court, and has vested those attributes in a non-Art. III adjunct." (102 S. Ct. at 2880).

The Court in Marathon stayed its decision until October 4, 1982, in order to "afford Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication, without impairing the interim administration of the bankruptcy laws." (Id. at 2880).

Congress did not take such action and the stay expired prior to the enactment of any legislation.

In the interim, an "Emergency Rule" was adopted as a local rule by the District Court to govern bankruptcy proceedings pending enactment of legislation. The Emergency Rule provided that in certain civil proceedings, bankruptcy judges could not enter final judgments or dispositive orders with respect to "related to" cases commenced under the Bankruptcy Code. Paragraph (c) of the Emergency Rule provided in relevant part that "(1) All cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this district."

Bankruptcy judges were specifically authorized to perform in referred bankruptcy cases and proceedings "all acts and duties necessary for the handling of those cases and proceedings" with certain enumerated exceptions. (Emergency Rule paragraph (d)).

It is significant that the matter of the authority of the Bankruptcy Court to rule on a fee application, or to rule on an objection to a claim against the estate was never at issue.

The constitutionality of the Emergency Rule was questioned and upheld by circuit courts without exception. The Sixth Circuit upheld the constitutionality of the Rule in the case of White Motor Corp. v. Citibank, N.A., 704 F.2d 254 (6th Cir. 1983).

Finally, Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984 (hereinafter BAFJA).

BAFJA essentially codified the Emergency Rule. The primary jurisdictional provisions of BAFJA are found in 28 U.S.C. §§1334 and 157. 28 U.S.C. §1334(a) provides as follows:

> Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

The "cases" referred to in §1334(a) are distinguishable from civil proceedings arising under Title 11 or civil proceedings related to or arising in Title 11 cases. In the latter cases, jurisdiction of the District Court is original but not exclusive. The "cases" referred to in

§1334(a) are those proceedings which naturally follow the filing of a bankruptcy petition.

Pursuant to 28 U.S.C. §151, the Bankruptcy Court is a "unit" of the District Court. 28 U.S.C. §157(a) allows the District Court to refer all cases and/or proceedings to the Bankruptcy Court, and the Bankruptcy Court may hear and enter final orders in all core matters pursuant to 28 U.S.C. §157(b)(1).

Core matters are defined in 28 U.S.C. §157(b) by a nonexclusive list of examples including, but not limited to administrative matters. (§157(b)(2)(A)). Fee applications of debtors' counsel, seeking administrative expenses, are most certainly administrative matters. Specifically, §507(a)(1) of the Bankruptcy Code provides for a priority for administrative expenses allowed under §503(b) of the Bankruptcy Code. §503(b)(2) of the Bankruptcy Code provides for allowance of administrative expenses including compensation of officers awarded under §330(a) of the Bankruptcy Code. Saker's fee application was made pursuant to §330(a) of the Bankruptcy Code.

Hence, there is no question that bankruptcy judges have explicit, constitutional authority to decide fee application matters such as that brought by Saker. The United States Court of Appeals for the Sixth Circuit cited

the language of 28 U.S.C. §157(b), indicating that "This language is intended to give the bankruptcy court jurisdiction over core proceedings that does not exceed constitutional limits." (Pet. Appendix, p. A-10, citing In re Meyertech Corp., 831 F.2d 410, 416 (3d Cir. 1987). That Court further found the Bankruptcy Court's exercise of jurisdiction to enter a final order on Saker's application for fees to be "within the constitutional limits established by Marathon." The Court noted as follows:

> In his plurality opinion, Justice Brennan described the jurisdiction of bankruptcy courts: "[T]he restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights . . . ." 458 U.S. at 71. The awarding of fees to a debtor's attorney is an aspect of debtor-creditor relations, and no state-created private rights are involved.

(Pet. Appendix, pp. A-11 and A-12).

Saker's narrative argument, attempting to down play the holding of the Court in In re Meyertech Corp., 831 F.2d 410 (3d Cir. 1987) and citation to Collier on Bankruptcy with respect to certain issues under §157(b)(1) evidence Saker's questioning of the entire bankruptcy court scheme, rather than the clear, narrow issue of bankruptcy court

authority to determine the fees of a debtor's attorney, upon which he clearly could not prevail.

3. SAKER'S PETITION FOR A WRIT OF CERTIORARI IS FRIVOLOUS, JUSTIFYING AN AWARD OF DAMAGES AND COSTS TO RESPONDENT.

Rule 42.2 of the Rules of this Honorable Court provides in relevant part:

> When a petition for a writ of certiorari . . . is frivolous, the Court may award the respondent or appellee just damages and single or double costs."

Both the United States District Court for the Southern District of Ohio and the United States Court of Appeals for the Sixth Circuit has found Saker's challenge to the constitutionality of the bankruptcy court system to be frivolous. Respondent urges this Honorable Court to recognize the instant petition for a writ of certiorari to be nothing more than the continuance of Saker's "outrageously obvious ploy aimed at frustrating the efficient administration of this case." (Pet. Appendix, p. A-23). The frivolous nature of the instant petition justifies the award to respondent of damages consisting of the value of the time spent in defending this latest appeal, which must otherwise be borne by the innocent creditors of the estate of Holiday Towers, Inc., plus costs.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Petition for Writ of Certiorari be denied, and that respondent be awarded damages and costs.

Respectfully submitted,

LUPER, WOLINETZ, SHERIFF & NEIDENTHAL
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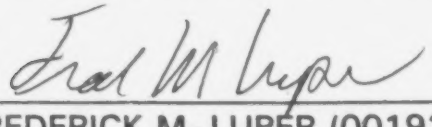

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that all parties required to be served with the foregoing Brief of Respondent in Opposition to Petition for a Writ of Certiorari have been served and that a true copy of the same was sent via U.S. Mail, postage prepaid, to Theodore R. Saker, Attorney for Petitioner, 750 South Front Street, Columbus, Ohio 43206, on this 14th day of September, 1992.

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